Re Sanyan Sawmill Sdn Bhd (in liquidation); ex parte Dato' Ting Check Sii

HIGH COURT (SIBU) — SUIT NO SBW-29NCC-267/8 OF 2015
LIM HOCK LENG J
7 JULY 2020

Bankruptcy — Petition — Stay — Judgment debtor owed judgment sum to judgment creditor — Judgment debtor exhausted all available appeal process — Bankruptcy proceedings initiated against judgment debtor — Judgment debtor's application for interim injunction against liquidator was dismissed — Judgment debtor filed application to stay proceedings under creditor's petition pursuant to s 97 of the Insolvency Act 1967 — Whether judgment debtor had proven 'sufficient reason' for court to grant stay — Insolvency Act 1967 s 97

Dato' Ting Check Sii ('JD') owed Sanyan Sawmill Sdn Bhd (in liquidation) ('JC'), a judgment sum amounting to RM300,000 (with interest and costs to be added thereon) pursuant to the High Court's decision after a full trial. The JD was one of the directors and majority shareholders/contributories. The company was wound up in 2012 by minority shareholders on grounds of oppression. One Wan Idris bin Wan Ibrahim was appointed as the liquidator. The JD had exhausted all the available appeal process to challenge the judgment sum but to no avail. After bankruptcy proceedings were initiated against the JD, the JD had taken many steps to thwart the said proceedings. The JD had even applied for interim injunction to restrain Wan Idris from acting as liquidator but the said application was dismissed by the court. After the High Court declined to grant the JD the interim injunction, the stay application vide encl 95 was filed. This judgment was in relation to this encl 95.

Held, dismissing encl 95 with costs of RM8,000:

(1) The JD had failed to make out 'sufficient reason' to stay the proceedings under the creditor's petition pursuant to s 97 of the Insolvency Act 1967. The JD's appeals against Sanyan Wood Industries Sdn Bhd and Goodmatch Sdn Bhd did not concern or involve the JC or even the liquidator. As all avenues of appeal had been exhausted in respect of the judgment sum, it remained intact and the JC was therefore entitled to the fruits of its litigation. Furthermore, the stay application was made belatedly and that, only after the collateral attacks amounting to an abuse of process had been parried (see paras 20 & 22–24).

(2) The JC which was entitled to monetary payment had every right to decline the offer of a security (which would take time to dispose of) made

at the 11th hour. The JC ought not to be kept waiting to collect on a judgment which had remained unsatisfied since 2015, more so when no dates had been fixed for the unrelated appeals. In any event, an appeal did not operate as a stay. The JD had not shown sufficient reason for a stay to be granted (see para 25).

[Bahasa Malaysia summary

Dato' Ting Check Sii ('JD') berhutang kepada Sanyan Sawmill Sdn Bhd (dalam likuidasi) ('JC'), jumlah penghakiman sebanyak RM300,000 (dengan faedah dan kos yang akan ditambahkan) berdasarkan keputusan Mahkamah Tinggi setelah perbicaraan penuh. JD adalah salah seorang pengarah dan pemegang saham/penyumbang majoriti. Syarikat tersebut digulung pada tahun 2012 oleh pemegang saham minoriti atas alasan penindasan. Seorang yang dikenali sebagai Wan Idris bin Wan Ibrahim dilantik sebagai pelikuidasi. JD telah menghabiskan semua proses rayuan yang ada untuk mencabar jumlah penghakiman tetapi tidak berhasil. Setelah prosiding kebankrapan dimulakan terhadap JD, JD telah mengambil pelbagai langkah untuk menggagalkan prosiding tersebut. JD bahkan telah memohon injunksi interim untuk menahan Wan Idris daripada bertindak sebagai pelikuidasi tetapi permohonan tersebut ditolak oleh mahkamah. Setelah Mahkamah Tinggi menolak untuk memberikan injunksi interim tersebut kepada JD, permohonan penagguhan melalui lampiran 95 telah difailkan. Penghakiman ini berkaitan dengan lampiran 95 tersebut.

Diputuskan, menolak lampiran 95 dengan kos sebanyak RM8,000:

(1) JD gagal membuktikan 'alasan yang mencukupi' untuk menangguhkan prosiding di bawah petisyen pemiutang menurut s 97 Akta Insolvensi 1967. Rayuan JD terhadap Sanyan Wood Industries Sdn Bhd dan Goodmatch Sdn Bhd tidak berkaitan atau melibatkan JC atau bahkan pelikuidasi. Oleh kerana semua jalan rayuan berkaitan dengan jumlah penghakiman telah habis digunakan, keputusan tersebut tetap utuh dan oleh itu JC berhak atas hasil litigasinya. Selain itu, permohonan penangguhan dibuat dalam tempoh yang lambat dan hanya setelah serangan balas yang merupakan penyalahgunaan proses mahkamah dibuat (lihat perenggan 20 & 22–24).

(2) JC yang berhak mendapat pembayaran wang mempunyai hak untuk menolak tawaran jaminan (yang akan memakan masa untuk dilupuskan) yang dibuat pada saat akhir. JC tidak harus dibiarkan untuk terus menunggu bagi mendapatkan jumlah penghakiman yang masih tidak dipenuhi sejak tahun 2015, lebih-lebih lagi apabila tiada tarikh yang ditetapkan untuk rayuan-rayuan lain yang tidak berkaitan. Walau bagaimanapun, rayuan tidak berfungsi sebagai penangguhan. JD tidak menunjukkan alasan yang cukup untuk penangguhan diberikan (lihat perenggan 25).]

Cases referred to

Chen Ying @ Chin Ying v Export-Import Bank of Malaysia Bhd [2016] 4 MLJ 324; [2016] 7 CLJ 475, CA (refd)

J Raju M Kerpaya @ Jayaraman Kerpaya, Re; Ex-parte: Kwong Yik Bank [2009] 1 LNS 649, HC (refd)

Tan Bon Kiat, Re; Ex-parte Malayan Banking Berhad [2020] MLJU 171; [2019] 1 LNS 1583, HC (refd)

Legislation referred to

Insolvency Act 1967 s 97

Peter Mijin (CH Chiew & Partners) for the judgment creditor.
Wong King Wei (Ting Ching Ching with him) (King Wei & Clement) for the judgment debtor.

Lim Hock Leng J:

[1] On 28 July 2015, judgment in the sum of RM300,000 (with interest and costs to be added thereon) was entered against one Dato' Ting Check Sii ('the judgment debtor'), after a full trial in Kuching High Court Suit No KCH-22NCvC-24/4 of 2014.

[2] The judgment sum is owed to Sanyan Sawmill Sdn Bhd (in liquidation), in which the judgment debtor was one of the directors and majority shareholders/contributories. The company was wound up in 2012 by minority shareholders on grounds of oppression. One Wan Idris bin Wan Ibrahim was appointed as the liquidator.

[3] On 17 August 2016, the appeal by the judgment debtor was dismissed by the Court of Appeal.

[4] On 15 September 2016, the judgment debtor applied for leave to appeal to the Federal Court. The leave application was dismissed.

[5] The appeal process by the judgment debtor has been exhausted.

BANKRUPTCY PROCEEDINGS

[6] After judgment was obtained against the judgment debtor by the liquidator of the company, a bankruptcy notice was issued against the judgment debtor on 26 August 2015.

[7] The judgment debtor failed to set aside the bankruptcy notice before the senior assistant registrar. He also failed to do so on appeal before the High Court judge.

[8] On 16 October 2015, a creditor's petition was filed. The judgment debtor challenged it by a summons in chambers and a notice of intention to oppose the creditor's petition.

[9] There followed an exchange of affidavits, with the last affidavit filed by the liquidator in January 2016. Submissions have been exchanged. At this stage, I interpolate to narrate the other steps taken by the judgment debtor in his tussle with the judgment creditor.

COLLATERAL ATTACKS BY THE JUDGMENT DEBTOR

[10] After the judgment debtor failed to obtain leave to appeal to the Federal Court, he lodged a proof of debt for RM309,300.30 equalling the judgment sum against him. He did so on grounds which had been decided against him in the judgment. It was rejected by the liquidator.

[11] The judgment debtor then filed an originating summons ('the OS') to challenge the rejection of the proof of debt. He argued that the judgment could not be enforced against him during the pendency of the OS.

[12] The OS was dismissed on 16 November 2018.

[13] The judgment debtor also filed a notice of motion to reverse the decision of the liquidator. Again, the judgment debtor was unsuccessful. The notice of motion was dismissed on on 9 December 2019.

[14] The judgment debtor has appealed to the Court of Appeal but no date of hearing has been fixed.

[15] I now return to the bankruptcy proceedings. On 13 December 2019, the registrar gave directions for supplementary submissions to be filed by 14 February 2020. She fixed the ruling on the judgment debtor's application to set aside the creditor's petition for 9 March 2020, which date was subsequently rescheduled.

[16] The judgment debtor also filed a notice of motion to remove the liquidator and applied for an interim injunction to restrain the said Wan Idris from acting as the liquidator.

[17] On 4 March 2020, the judgment debtor's application for the interim injunction was dismissed.

[18] There were other steps taken by the judgment debtor to thwart the bankruptcy proceedings. A full list is set out in para 24 herein below.

STAY APPLICATION NOW BEFORE THE COURT

[19] After the High Court declined to grant the judgment debtor the interim injunction, the stay application vide encl 95 was filed.

[20] This court finds that the judgment debtor has failed to make out 'sufficient reason' to stay the proceedings under the creditor's petition pursuant to s 97 of the Insolvency Act which provides:

> The court may at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to conditions as the court thinks just.

[21] In *Chen Ying @ Chin Ying v Export-Import Bank of Malaysia Bhd* [2016] 4 MLJ 324; [2016] 7 CLJ 475, it was held by Mary Lim JCA:

> In an application for stay of enforcement or execution of judgment, the test should rightly by 'special circumstances'. This has long been the abiding test — see *Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd* [2004] 1 MLJ 257; [2003] 4 CLJ 1; *Ming Ann Holdings Sdn Bhd v Danaharta Urus Sdn Bhd* [2002] 3 MLJ 49; [2002] 3 CLJ 380. That, however, is not the test for a stay of bankruptcy proceedings. The test as enunciated in s 97 itself is the provision of sufficient reason.
>
> [18] The important distinction between these two tests for stay was carefully explained by Ramly J (as His Lordship then was) in *Re Rosli Abdul Kadir; Ex p Bank Kerjasama Rakyat Malaysia Bhd* [2008] MLJU 1096; [2008] 5 CLJ 691:
>
> > [6] The test of 'special circumstances' or 'special grounds' is distinct from the test of 'sufficient reason' in its principle, legal meaning, weight to the test, degree of burden to be proved to satisfy the court and particular facts that need to be adduced to pass each test. Even the words 'special' and 'sufficient'; are different in the ordinary meanings.
> >
> > [7] Certainly, the weight and degree of burden to be proved to satisfy the court in 'special circumstances' test is higher than the 'sufficient reason'; test and the weight and the degree of burden to be proved to satisfy the court in 'sufficient reason' test is lower than in the 'special circumstances' test. To quote the words of Abdul Hamid Mohamad JCA (as he then was) in *Ming Ann Holdings Sdn bhd v Danaharta Urus Sdn Bhd* [2002] 3 MLJ 49; [2002] 3 CLJ 380 (CA):
> >
> > > ... the special circumstances must be special, not ordinary, common or usual circumstances and that go to the execution of the judgment and not to the validity or correctness of the judgment (or merits of the appeal).

[8] As such the degree that needs to be passed under 'special circumstances' test is beyond the 'sufficient reasons'.

[22] The judgment debtor says he has filed appeals against Sanyan Wood Industries Sdn Bhd and Goodmatch Sdn Bhd. See judgment debtor's affidavit in support, encl 94, para 11. But, they do not concern or involve the judgment creditor. Or even the liquidator.

[23] As all avenues of appeal have been exhausted in respect of the judgment sum, it remains intact and the judgment creditor, Sanyan Sawmill Sdn Bhd (in liquidation) is entitled to the fruits of its litigation.

[24] The stay application was made belatedly and that, only after the collateral attacks amounting to an abuse of process had been parried. In this regard, reference may be made to the following applications and appeals filed by the judgment debtor which cumulatively are tantamount to an abuse of process. See *Tan Bon Kiat, Re; Ex-parte Malayan Banking Berhad* [2020] MLJU 171; [2019] 1 LNS 1583 and *ReJ Raju M Kerpaya @ Jayaraman Kerpaya; Ex-parte: Kwong Yik Bank* [2009] 1 LNS 649. The applications and appeals have been set out in the following manner by learned counsel for the judgment creditor:

(a) 28 August 2015 — Dato' Ting's judgment CA appeal;

(b) 10 September 2015 — Dato' Ting's application to set aside BN;

(c) 11 December 2015 — Dato' Ting's application to set aside CP and a notice of intention to oppose petition;

(d) 18 December 2015 — Dato' Ting's notice of appeal to judge in chambers against dismissal of application to set aside BN;

(e) 15 August 2016 — Dato' Ting's judgment FC application;

(f) 5 March 2018 — Dato' Ting's lodgement of the unfounded POD;

(g) 16 April 2018 — Dato' Ting's POD rejection application No 1;

(h) 26 December 2018 — POD rejection application No 2;

(i) 4 December 2019 — removal application and the proposed injunction;

(j) 18 December 2019 — POD rejection appeal; and

(k) 6 March 2020 — the stay application.

See judgment creditor's submissions, encl 106, para 8.3.

[25] The judgment creditor which is entitled to monetary payment has every right to decline the offer of a security (which would take time to dispose of)

made at the 11th hour. The judgment creditor ought not to be kept waiting to collect on a judgment which has remained unsatisfied since 2015, more so when no dates have been fixed for the unrelated appeals. In any event, an appeal does not operate as a stay. The judgment debtor has not shown sufficient reason for a stay to be granted.

[26] Enclosure 95 is dismissed with costs of RM8,000.

Enclosure 95 dismissed with costs of RM8,000.

Reported by Dzulqarnain bin Ab Fatar